

FILED

DEC 29 2015

CLERK
SUPREME COURT

**SUPREME COURT OF KENTUCKY
CASE NO. 2015-SC-000371-TG**

RECEIVED

DEC - 9 2015

CLERK
SUPREME COURT

**KENTUCKY RESTAURANT ASSOCIATION, INC.,
KENTUCKY RETAIL FEDERATION, INC., and
PACKAGING UNLIMITED, LLC**

APPELLANTS

**v. ON APPEAL FROM JEFFERSON CIRCUIT COURT
JUDITH MCDONALD-BURKMAN, JUDGE
CASE NO. 15-CI-000754**

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT APPELLEE

**** * * * ***

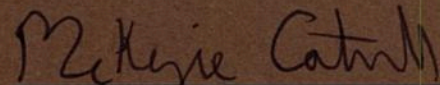
**AMICI CURIAE BRIEF OF KENTUCKY EQUAL JUSTICE CENTER, KENTUCKY
COALITION AGAINST DOMESTIC VIOLENCE, KENTUCKIANS FOR THE
COMMONWEALTH, AND PLUMBERS AND PIPEFITTERS LOCAL 633**

McKenzie Cantrell
Kentucky Equal Justice Center
455 South 4th Street, Suite 1071
Louisville, KY 40202
(502)-333-6019

COUNSEL FOR *AMICI CURIAE*
KENTUCKY EQUAL JUSTICE CENTER
NATIONAL EMPLOYMENT LAW PROJECT
KENTUCKY COALITION AGAINST DOMESTIC VIOLENCE
KENTUCKIANS FOR THE COMMONWEALTH
PLUMBERS AND PIPEFITTERS LOCAL 633
FREDDY PERALTA, OWNER, KYTRADE COMPUTERS, LLC
TERESA HENDRICKS, OWNER, LUCIA'S WORLD IMPORTS, LLC
BEN CARTER, OWNER, BEN CARTER LAW, PLLC
DAN BORSCH, OWNER OF BURGER BOY DINER
THOMAS CORNETT, PRESIDENT AND FOUNDER OF BLEED BLUE TATTOO

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of December, 2015, ten (10) original copies of this brief was served in person upon Susan Stokely Clary, Clerk of Supreme Court of Kentucky State Capitol, Room 235, 700 Capitol Avenue, Frankfort, KY 40601-3415, and one (1) copy served via regular U.S. mail to: Brent R. Baughman and Aleksandr "Sasha" Litvinow, Counsel for Appellants, Bingham Greenbaum Doll, LLP, 3500 National City Tower, 101 S. 5th Street, Louisville, KY 40202; Michael J. O'Connell, E. Patrick Mulvihill, David A. Sexton, and Sarah J. Martin, Counsel for Appellee, Jefferson County Attorney's Office, 531 Court Place, Suite 900, Louisville, KY 40202.


MCKENZIE CANTRELL

STATEMENT OF POINTS AND AUTHORITIES

PURPOSE AND INTEREST OF <i>AMICI CURIAE</i>	1-2
STATEMENT OF THE CASE.....	2
Ordinance No. 214, Series 2014	2
ARGUMENT	2
I. GROWING NUMBER OF CITIES ACROSS THE U.S. ARE ADOPTING HIGHER LOCAL MINIMUM WAGES TO ADDRESS LOCAL NEEDS	2
Nancy Cook, “Americans Prefer Their Solutions Locally Sourced.” <i>The Atlantic</i> , (March 14, 2015)....	3
Mike Wynn, “Poll: Most Voters Want \$10.10 Minimum Wage.” <i>The Courier-Journal</i> , (Sept. 2, 2014).....	3
S. 1150, 114 th Cong., (2015–2016).....	3
S. 1832, 114 th Cong., (2015–2016).....	3
HB 1, Reg. Leg. Sess. (Ky. 2014) (unenacted)	3
HB 2, Reg. Leg. Sess. (Ky. 2015) (unenacted).	3
Gregory A. Hall, “Minimum Wage Bill Passes KY House.” <i>The Courier-Journal</i> , (Feb. 10, 2015).....	3
<i>City of Erlanger v. KSL Realty Corporation</i> , 704 S.W.2d 649, 650 (Ky. 1986).	3
Jason Bailey, “More than One in Five Louisville Workers Would Benefit from Proposed Minimum Wage Increase,” <i>Kentucky Center for Economic Policy</i> , (September 23, 2014).....	3
Jason Bailey, “Who Stands to Benefit from a Minimum Wage Increase in Lexington,” <i>Kentucky Center for Economic Policy</i> , (March 16, 2015).....	3-4
NELP’s “City Minimum Wage Laws: Recent Trends and Economic Evidence.” (Sept. 2015).....	4
Raise the Minimum Wage, Local Minimum Wage Laws and Current Campaigns.....	4

Figure 1: Citywide Minimum Wage Ordinances in the U.S.	4-5
II. EVIDENCE SHOWS THAT HIGHER LOCAL MINIMUM WAGES HAVE RAISED WAGES FOR LOCAL WORKERS WITHOUT SLOWING JOB GROWTH OR LEADING BUSINESSES TO CLOSE OR RELOCATE	6
A. Rigorous Economic Studies Show that a Higher Local Minimum Wage Has No Discernible Impact on Employment	6
Editorial Board, “Raise the Minimum Wage,” <i>BloombergView</i> (Apr. 18, 2012).....	6
Arindrajit Dube, T. William Lester, and Michael Reich, “Minimum Wage Effects Across State Borders: Estimates Using Contiguous Counties,” <i>The Review of Economics and Statistics</i> , 92(4): 945–964 (Nov. 2010).....	6-7
Sylvia Allegretto, Arindrajit Dube, and Michael Reich “Do Minimum Wages Reduce Teen Employment?” <i>Industrial Relations</i> , vol. 50, no. 2 (Apr. 2011).....	7
Hristos Doucouliagos & T.D. Stanley, “Publication Selection Bias in Minimum-Wage Research? A Meta-Regression Analysis,” <i>British J. of Indus. Relations</i> , Vol. 47, Iss. 2, (May 2009).....	7-8
Paul Wolfson & Dale Belman, “What Does the Minimum Wage Do?,” <i>Upjohn Inst. for Employ. Res.</i> (2014).	8
Center for Economic & Policy Research, “2014 Job Creation Faster in States that Raised the Minimum Wage.” (June 2014).....	8
Fiscal Policy Institute, “States with Minimum Wages above the Federal Level Have Had Faster Small Business and Retail Job Growth” (Mar. 2006)	8
Michael Reich, Ken Jacobs & Annette Bernhardt, “Local Minimum Wage Laws: Impacts on Workers, Families and Businesses: Report prepared for the Seattle Income Inequality Advisory Committee,” (Mar. 2014).....	8
Michael Reich, Arindrajit Dube & Suresh Naidu, “The Economic Effects of a Citywide Minimum Wage,” <i>Univ. of Calif.-Berkeley</i> (2007).....	9
Michael Reich, Ken Jacobs & Miranda Dietz (eds.), “When Mandates Work: Raising Labor Standards at the Local Level,” <i>Univ. of Calif. Press</i> (2014)	9
Susan Berfield, “San Francisco’s Higher Minimum Wage Hasn’t Hurt the Economy,” <i>BloombergBusiness</i> , (January 22, 2014).....	9

Carolyn Lochhead, “S.F. Praised as Model for U.S. on Increasing Minimum Wage,” <i>SF Gate</i> (January 28, 2014)	9
---	---

Bureau of Business and Economic Research, University of New Mexico, “Measuring the Employment Impacts of the Living Wage Ordinance in Santa Fe, New Mexico” (Jun. 2006)	9
---	---

John Schmitt & David Rosnick, “The Wage and Employment Impact of Minimum-Wage Laws in Three Cities” <i>Center for Economic and Policy Research</i> (Mar. 2011).....	10
--	----

B. Recent Increases to the Local Minimum Wage Rates in California and Washington Cities Have Disproved Opponents’ Predictions.....10

Eric Morath, “What Happened to Fast-Food Workers When San Jose Raised the Minimum Wage? Hold the Layoffs”, <i>Wall Street Journal</i> (April 9, 2014).	11
--	----

Paul Davidson, “In San Jose, Higher Minimum Wage Pays Benefits,” <i>USA Today</i> (June 14, 2014)....	11
--	----

Amy Martinez, “\$15 Wage Slowly Takes Hold in SeaTac,” <i>Seattle Times</i> (June 3, 2014).	11
---	----

Dana Milbank, “Raising the minimum wage without raising havoc,” <i>The Washington Post</i> , (Sept. 5, 2014).....	11
--	----

Jeanine Stewart, “Apocalypse Not: \$15 and the cuts that never came,” <i>Puget Sound Business Journal</i> (Oct. 23, 2015)	12
--	----

Alan Stonecipher & Ben Wilcox, “Minimum Wage Policy and the Resulting Effect on Employment,” <i>Integrity Florida</i> , (July 2015).....	12
---	----

III. STATES GENERALLY LEAVE THE QUESTION OF WHETHER LOCALITIES CAN ENACT LOCAL MINIMUM WAGE LAWS TO THE STATE LEGISLATURE, AND COURTS ADDRESSING THE QUESTION HAVE GENERALLY UPHOLD LOCAL MINIMUM WAGE LAWS.....12

La. Rev. Stat. tit. 23 § 652(B) (2012)	13
--	----

Okla. Stat. tit. 40 § 160 (2014).....	13
---------------------------------------	----

Ga. Code Ann. § 34-4-3.1(b)(1) (2004).....	13
--	----

Tenn. Code Ann. § 50-2-113 (2013).....	13
--	----

Miss. Code Ann. § 17-1-51 (2013).....	13
---------------------------------------	----

Kan. Stat. Ann. § 12-16,131(a)(3) (2013).....	13
Fla. Stat. § 218.077 (2013).....	13
<i>New Mexicans for Free Enterprise v. City of Santa Fe</i> , 126 P.3d 1149, 1166 (N. Mex. Ct. App. 2005).....	13-14
<i>City Council of Baltimore v. Sitnick</i> , 255 A.2d 376 (Md. Ct. App. 1969).....	14
<i>Main Street Coalition for Economic Growth v. City of Madison</i> , No. 04-CV-3853, slip op. (Dane County Cir. Ct., Branch 2, Apr. 21, 2005).	14
Wis. Stat. § 104.001(1)-(2) (2005).....	14
CONCLUSION	15

PURPOSE AND INTEREST OF AMICI CURIAE

Formed in 1976, Kentucky Equal Justice Center (“KEJC”) is a non-profit legal services organization and advocate for low income Kentuckians. The vast majority, if not all, of KEJC’s clients fall below two hundred percent of the federal poverty guidelines and would thus be affected by the Court’s ruling in this case.

The National Employment Law Project (“NELP”) is a national research and policy organization known for its expertise on workforce issues. NELP has worked with most of the cities in the United States that have adopted higher city minimum wages. NELP has an interest in ensuring that the Ordinance is fully enforced according to its terms, and that the constitutional and other challenges to its implementation be rejected.

The Kentucky Coalition Against Domestic Violence (“KCADV”) is a non-profit that supports its member programs and allies in order to end intimate partner abuse. KCADV’s Economic Empowerment Program serves thousands of survivors of domestic violence a year, addressing the economic hurdles that survivors face when leaving an abuser. Helping survivors acquire the financial resources to get ahead is key to helping them become self-sufficient.

Plumbers and Pipefitters Local 633 (“Local 633”) was founded in 1920 and is headquartered in Owensboro, Kentucky. Every worker would like a safe, well-paying job that affords his or her family a good quality of life. Local 633’s mission is to ensure workers have a voice in on-the-job working conditions.

Kentuckians for the Commonwealth (“KFTC”) is a grassroots political organization that advocates for a better life for all Kentuckians. Every Kentuckian should be able to live, work, and put food on the table, right here at home.

Freddy Peralta, owner of KyTrade Computers, LLC; Teresa Hendricks, owner of Lucia's Imports, LLC; Ben Carter, owner of Ben Carter Law, PLLC; Dan Borsch, owner of Burger Boy Diner; and Thomas Cornett, president and founder of Bleed Blue Tattoo are Kentucky business owners and members of Business for a Fair Minimum Wage. Business for a Fair Minimum Wage is a network of business owners and executives who believe a fair minimum wage makes good business sense.

STATEMENT OF THE CASE

Appellants ask this Court to determine whether the Louisville Metro Government had the authority to raise the minimum wage through Ordinance No. 216 (hereinafter “Ordinance”) and whether the private right of action included in the Ordinance is valid. *Amici Curiae* submit that these arguments do not reflect the majority view of other states that have found similar local minimum wage laws constitutional. Cities that have enacted local minimum wage increases to address the high cost of living in their area and the failure of state and federal governments to raise the minimum wage have done so successfully, both economically and legally. Economic research shows that the Ordinance will substantially benefit the public interest, and a decision upholding the Ordinance would join the majority of courts in other states that have upheld similar laws.

ARGUMENT

I. A GROWING NUMBER OF CITIES ACROSS THE U.S. ARE ADOPTING HIGHER LOCAL MINIMUM WAGES TO ADDRESS LOCAL NEEDS

Over the past decade, a growing number of U.S. cities have pursued higher minimum wages at the local level. Looking to local government for solutions to problems that were once viewed as largely in the federal or state government’s purview is part of a

growing trend of policymaking galvanized by the Great Recession and the increasingly divisive nature of state and national politics.¹ The trend is spanning into in a wide range of areas, as both Congress and state legislatures find themselves frequently gridlocked and unable to respond to significant public needs.

According to the August 2014 Bluegrass Poll, the majority of voters surveyed favored raising the minimum wage.² Despite proposals in Congress³ and in the Kentucky General Assembly⁴ that would have raised the federal and statewide minimum wage, respectively, federal and Kentucky legislators have failed to directly raise the wages of 391,000 Kentuckians⁵ who currently earn less than \$10.10 an hour. Louisvillians looked for policy change from Metro Council after repeated failures and non-action from other lawmaking bodies. The actions of Metro Council are presumed to be constitutional.⁶ According to the Kentucky Center for Economic Policy, more than one in five Louisville workers will benefit from the increase.⁷

¹ Nancy Cook, “Americans Prefer Their Solutions Locally Sourced,” *The Atlantic*, Mar. 14, 2015, available at <http://www.theatlantic.com/business/archive/2015/03/americans-prefer-their-solutions-locally-sourced/387631/>.

² Mike Wynn, “Poll: Most voters want \$10.10 minimum wage,” *The Courier-Journal*, Sept. 2, 2014, available at <http://www.courier-journal.com/story/money/2014/08/31/bluegrass-poll-voters-want-higher-minimum-wage/14913291/>.

³ See S. 1150, 114th Cong., (2015–2016); S. 1832, 114th Cong., (2015–2016).

⁴ See HB 1, Reg. Leg. Sess. (2014); HB 2, Reg. Leg. Sess. (2015).

⁵ Gregory A. Hall, “Minimum wage bill passes Ky. House,” *The Courier-Journal*, Feb. 10, 2015, available at <http://www.courier-journal.com/story/news/politics/ky-legislature/2015/02/10/minimum-wage-bill-passes-ky-house/23194677/>.

⁶ See *City of Erlanger v. KSL Realty Corp.*, 704 S.W.2d 649, 650 (Ky. 1986) (“The law presumes an ordinance valid if any proper reasonable basis can be perceived to justify the classification.”).

⁷ See Jason Bailey, “More than One in Five Louisville Workers Would Benefit from Proposed Minimum Wage Increase,” *Kentucky Center for Economic Policy*, (September 23, 2014), available at <http://kypolicy.org/dash/wp-content/uploads/2014/09/Louisville-Min-Wage1.pdf>. For estimates on the number of workers affected by Lexington,

Although the majority of citywide minimum wage campaigns have taken place in the past two years, citywide minimum wage ordinances have been a legal and economic tool for policymakers for over a decade. In an effort to respond to higher local living costs and to bring the minimum wage closer to a living wage level, these laws have proven, both legally and economically, that it is feasible to raise wages in accordance with economic indicators.⁸ These increases have taken place in cities and counties in more than ten states across the country. They include Birmingham, Alabama, Johnson County, Iowa, Los Angeles, California, and Chicago, Illinois, to name a few, and the list continues to grow rapidly.⁹

Figure 1: Citywide Minimum Wage Ordinances in the U.S.¹⁰

City	Year Passed	Minimum Wage
Santa Fe, New Mexico	2003	\$9.50 (2006) (Current: \$10.84)
San Francisco, California	2003	\$8.50 (2004)
Albuquerque, New Mexico	2012	\$8.50 (2013) (Current: \$8.75)
San Jose, California	2012	\$10.00 (2013) (Current: \$10.30)
Bernalillo County, New Mexico	2013	\$8.50 (2014) (Current: \$8.65)
Washington, D.C.	2013	\$11.50 (2016)
Montgomery County, Maryland	2013	\$11.50 (2017)

Kentucky's recently enacted increase, *see* Jason Bailey, "Who Stands to Benefit from a Minimum Wage Increase in Lexington," *Kentucky Center for Economic Policy*, (March 16, 2015), *available at* <http://kypolicy.org/dash/wp-content/uploads/2015/03/Lexington-Minimum-Wage-Brief1.pdf>.

⁸ *See* National Employment Law Project, *City Minimum Wage Laws: Recent Trends and Economic Evidence* (Sept. 2015), *available at* <http://www.nelp.org/content/uploads/City-Minimum-Wage-Laws-Recent-Trends-Economic-Evidence.pdf>.

⁹ *Id.*; *see also* Raise the Minimum Wage, *Local Minimum Wage Laws and Current Campaigns*, <http://www.raisetheminimumwage.com/pages/local-minimum-wage> (last viewed Dec. 7, 2015).

¹⁰ *See* Raise the Minimum Wage, *Local Minimum Wage Laws and Current Campaigns*, <http://www.raisetheminimumwage.com/pages/local-minimum-wage> (last viewed Dec. 7, 2015).

Prince George's County, Maryland	2013	\$11.50 (2017)
SeaTac, Washington	2013	\$15.00 (2014) (Current: \$15.24)
Las Cruces, New Mexico	2014	\$10.10 (2019)
Santa Fe County, New Mexico	2014	\$10.66 (2014) (Current: \$10.84)
Mountain View, California	2014	\$10.30 (2015)
Sunnyvale, California	2014	\$10.30 (2015)
Oakland, California	2014	\$12.25 (2015)
Berkeley, California	2014	\$12.53 (2016)
Richmond, California	2014	\$13.00 (2018)
Chicago, Illinois	2014	\$13.00 (2019)
San Francisco, California	2014	\$15.00 (2018)
Seattle, Washington	2014	\$15.00 (2017–21)
Louisville, Kentucky	2015	\$9.00 (2017)
Emeryville, California	2015	\$16.00 (2019)
Los Angeles, California	2015	\$15.00 (2020–21)
Los Angeles County, California	2015	\$15.00 (2020–21)
Kansas City, Missouri	2015	\$13.00 (2020)
Portland, Maine	2015	\$10.68 (2017)
Birmingham, Alabama	2015	\$10.10 (2017)
Palo Alto, California	2015	\$11.00 (2016)
St. Louis, Missouri	2015	\$11.00 (2018)
Johnson County, Iowa	2015	\$10.10 (2017)
Sacramento, California	2015	\$12.50 (2020)
Tacoma, Washington	2015	\$12.00 (2018)
Lexington, Kentucky	2015	\$10.10 (2018)
Washington, D.C.	Proposed	
Sacramento, California	Proposed	
Davis, California	Proposed	
Olympia, Washington	Proposed	
Pasadena, California	Proposed	
San Diego, California	Proposed	
Long Beach, California	Proposed	
Other cities in LA County, California	Proposed	
Various Cities in Alameda & Contra Costa Counties, California	Proposed	

II. EVIDENCE SHOWS THAT HIGHER LOCAL MINIMUM WAGES HAVE RAISED WAGES FOR LOCAL WORKERS WITHOUT SLOWING JOB GROWTH OR LEADING BUSINESSES TO CLOSE OR RELOCATE

A. Rigorous Economic Studies Show that a Higher Local Minimum Wage Has No Discernible Impact on Employment

The most rigorous research over the past twenty years—examining scores of state and local minimum wage increases across the U.S.—demonstrates that these increases have had the effect of raising workers’ incomes *without* reducing employment. The substantial weight of evidence reflects a significant shift in the views of economists away from a former view that higher minimum wages cost significant numbers of jobs. As *BloombergView* summarized in 2012: “[A] wave of new economic research is disproving those arguments about job losses and youth employment. Previous studies tended not to control for regional economic trends that were already affecting employment levels, such as a manufacturing-dependent state that was shedding jobs.”¹¹

The most sophisticated of the new wave of minimum wage studies, “Minimum Wage Effects across State Borders,” was published in 2010 by economists at the Universities of California, Massachusetts, and North Carolina in the prestigious *Review of Economics and Statistics*.¹² That study carefully analyzed minimum wage impacts across state borders by comparing employment patterns in more than 250 pairs of neighboring

¹¹ Editorial Board, “Raise the Minimum Wage,” *BloombergView*, Apr. 18, 2012, available at <http://www.bloombergview.com/articles/2012-04-16/u-s-minimum-wage-lower-than-in-lbj-era-needs-a-raise>.

¹² Arindrajit Dube et al., “Minimum Wage Effects across State Borders: Estimates Using Contiguous Counties” *The Review of Economics and Statistics* (Nov. 2010) 92(4): 945–64. A summary of the study prepared by the National Employment Law Project is available at http://nelp.3cdn.net/98b449fce61fca7d43_j1m6iizwd.pdf.

counties in the U.S. that had different minimum wage rates between 1990 and 2006 as the result of being located in states with different minimum wages.¹³

Consistent with a long line of similar research, the study found no difference in job growth rates in the data from the 250 pairs of neighboring counties—such as Washington State’s Spokane County and Idaho’s Kootenai County, where the minimum wage was substantially lower—and found no evidence that higher minimum wages harmed states’ competitiveness by pushing businesses across the state line.¹⁴ This study’s innovative approach of comparing neighboring counties on either side of a state line is generally recognized as especially effective at isolating the true impact of minimum wage differences, and the results can be analogized to counties within a state that have differing minimum wages due to a citywide ordinance in an urban area.

However, it is not simply individual state-of-the-art studies, but the whole body of modern research on the minimum wage that now indicates that higher minimum wages have had little impact on employment levels. This is most clearly demonstrated by several recent “meta-studies” surveying research in the field. For example, a meta-study of sixty-four studies of the impact of minimum wage increases published in the *British Journal of Industrial Relations* in 2009 shows that the bulk of the studies find close to no impact on employment.¹⁵ Another recent

¹³ *Id.*

¹⁴ *Id.* Similar, sophisticated new research has also focused in particular on teen workers—a very small segment of the low-wage workforce affected by minimum wage increases, but one that is presumed to be especially vulnerable to displacement because of their lack of job tenure and experience. However, the research has similarly found no evidence that minimum wage increases in the U.S. in recent years have had any adverse effect on teen employment. See Sylvia Allegretto et al., “Do Minimum Wages Reduce Teen Employment?” *Industrial Relations* at vol. 50, no. 2. (Apr. 2011). A National Employment Law Project summary is available at http://nelp.3cdn.net/eb5df32f3af67ae91b_65m6iv7eb.pdf.

¹⁵ Hristos Doucouliagos & T.D. Stanley, “Publication Selection Bias in Minimum-Wage

meta-study of the minimum wage literature demonstrates similar results.¹⁶ Further underscoring how minimum wage increases are simply not a major factor affecting job growth, economists at the Center for Economic and Policy Research have noted that the U.S. states that have raised their minimum wages above the minimal federal level are enjoying stronger job growth than those that have not.¹⁷ Research on the impact of higher minimum wages on small businesses has similarly shown that higher minimum wages do not negatively impact job growth, and it has found faster job growth in higher minimum wage states. A 2006 report published by the Fiscal Policy Institute that examined state-by-state trends for small businesses employing fewer than fifty workers found that “employment and payrolls in small businesses grew faster in the states with minimum wages above the federal level.”¹⁸

The two U.S. cities that have had higher local minimum wages for the longest period are San Francisco, California, and Santa Fe, New Mexico.¹⁹ Both adopted significantly higher local minimum wages in 2003, and the impact of the minimum wage increase has been the subject of sophisticated economic impact studies. In San Francisco, a 2007 study by University of California researchers gathered employment and hours data

Research? A Meta-Regression Analysis,” *British J. of Indus. Relations*, Vol. 47, Iss. 2, (May 2009).

¹⁶Paul Wolfson & Dale Belman, “What Does the Minimum Wage Do?,” *Upjohn Inst. for Employ. Res.* (2014). *available at* http://research.upjohn.org/up_press/227/.

¹⁷ Center for Economic & Policy Research, 2014 Job Creation Faster in States that Raised the Minimum Wage (June 2014), *available at* <http://www.cepr.net/index.php/blogs/cepr-blog/2014-job-creation-in-states-that-raised-the-minimum-wage>.

¹⁸ Fiscal Policy Institute, “States with Minimum Wages above the Federal Level Have Had Faster Small Business and Retail Job Growth” (Mar. 2006) at 3, *available at* <http://www.fiscalspolicy.org/FPISmallBusinessMinWage.pdf>.

¹⁹ For a helpful overview of this literature on the impact of city minimum wages, see Michael Reich et al., “Local Minimum Wage Laws: Impacts on Workers, Families and Businesses: Report prepared for the Seattle Income Inequality Advisory Committee” (Mar. 2014) at 17–19, *available at* <http://murray.seattle.gov/wp-content/uploads/2014/03/UC-Berkeley-IIAC-Report-3-20-2014.pdf>.

from restaurants in San Francisco as well as from surrounding counties that were not covered by the higher minimum wage. The researchers found that the higher wage had not led San Francisco employers to reduce either their employment levels or employee hours worked.²⁰ A follow-up 2014 study examined the combined impact on San Francisco employers of the city's minimum wage ordinance and of other city compensation mandates that cumulatively raised employment costs 80 percent above the level of the federal minimum wage. The study again found no adverse effect on employment levels or hours, and found that food service jobs—the sector most heavily affected—actually grew 17 percent faster in San Francisco than surrounding counties during that period.²¹

Similarly, after Santa Fe raised its minimum wage to 65 percent above the state rate, a 2006 study compared job growth in Santa Fe with that in Albuquerque, which at that time did not have a higher city minimum wage. It determined that “[o]verall, . . . the living wage had no discernible impact on employment per firm, and that Santa Fe actually did better than Albuquerque in terms of employment changes.”²²

²⁰ Michael Reich et al., University of California, Berkeley, “The Economic Effects of a Citywide Minimum Wage” (2007), *available at* http://www.irle.berkeley.edu/cwed/wp/economicimpacts_07.pdf.

²¹ Michael Reich, Ken Jacobs & Miranda Dietz (eds.), “When Mandates Work: Raising Labor Standards at the Local Level,” *Univ. of Calif. Press* (2014) at 31; *see also* Susan Berfield, “San Francisco’s Higher Minimum Wage Hasn’t Hurt the Economy,” *BloombergBusiness*, Jan. 22, 2014, *available at* <http://www.businessweek.com/articles/2014-01-22/san-franciscos-higher-minimum-wage-hasnt-hurt-the-economy>; Carolyn Lochhead, “S.F. praised as model for U.S. on increasing minimum wage,” *SF Gate*, Jan. 28, 2014, *available at* <http://www.sfgate.com/politics/article/S-F-praised-as-model-for-U-S-on-increasing-5183378.php>.

²² Bureau of Business and Economic Research, University of New Mexico, “Measuring the Employment Impacts of the Living Wage Ordinance in Santa Fe, New Mexico” (Jun. 2006), *available at* <http://bber.unm.edu/pubs/EmploymentLivingWageAnalysis.pdf>.

Finally, a 2011 study of higher minimum wages in San Francisco, Santa Fe, and Washington, D.C., compared employment impacts to control groups in surrounding suburbs and cities. Its findings were similar to the studies described above. The study concluded that “[t]he results for fast food, food services, retail, and low-wage establishments . . . support the view that a citywide minimum wages [sic] can raise the earnings of low-wage workers, without a discernible impact on their employment.”²³

B. Experiences of Cities That Have Recently Raised the Minimum Wage Have Disproven Opponents’ Predictions

In addition to extensive research, the actual experiences of cities that have recently raised the minimum wage at the local level have shown that such increases have been manageable. It is not surprising that some employers might be anxious about the possible impact on their businesses of a higher minimum wage—and might fear that it would force them to cut jobs. But cities that have phased in higher minimum wages in recent years have found that the predictions of some employers that they would be forced to reduce employee hours or reduce job positions in order to adjust to the higher minimum wage have not been borne out.

For example, in San Jose, California, business groups made similar predictions before voters in 2012 approved raising the city’s minimum wage. But the actual results did not bear out those fears. As the *Wall Street Journal* reported, “[f]ast-food hiring in the region accelerated once the higher wage was in place. By early [2014], the pace of employment gains in the San Jose area beat the improvement in the entire state of

²³ John Schmitt & David Rosnick, “The Wage and Employment Impact of Minimum-Wage Laws in Three Cities” *Center for Economic and Policy Research* (Mar. 2011) at 1, available at <http://www.cepr.net/documents/publications/min-wage-2011-03.pdf>.

California.”²⁴ *USA Today* similarly found, “[i]nterviews with San Jose workers, businesses and industry officials show [the city minimum wage] has improved the lives of affected employees while imposing minimal costs on employers.”²⁵

The same pattern of dire predictions followed by manageable real world implementation was repeated when SeaTac, Washington, phased in its \$15 minimum wage—the nation’s first at that level. As *The Seattle Times* reported, “[f]or all the political uproar it caused, SeaTac’s closely watched experiment with a \$15 minimum wage has not created a large chain reaction of lost jobs and higher prices”²⁶ *The Washington Post* confirmed that “[t]hose who opposed the \$15 wage in SeaTac and Seattle admit there has been no calamity so far.”²⁷

In Seattle, while many business owners supported the increase, other business owners predicted that increasing the city’s minimum wage to \$15 would lead to dramatic job losses for restaurants and strain on small businesses. An article by the *Puget Sound Business Journal* reported in October 2015 that the restaurant business in Seattle is, in fact,

²⁴Eric Morath, “What Happened to Fast-Food Workers When San Jose Raised the Minimum Wage?” *Wall Street Journal* (Apr. 9, 2014), available at <http://blogs.wsj.com/economics/2014/04/09/what-happened-to-fast-food-workers-when-san-jose-raised-the-minimum-wage/>.

²⁵ Paul Davidson, “In San Jose, higher minimum wage pays benefits,” *USA Today* (June 14, 2014), available at <http://www.usatoday.com/story/money/business/2014/06/14/minimum-wage-san-jose/9968679/>.

²⁶ Amy Martinez, “\$15 wage floor slowly takes hold in SeaTac,” *The Seattle Times*, (June 3, 2014), available at http://seattletimes.com/html/localnews/2022905775_seatacprop1.xml.html.

²⁷ Dana Milbank, “Raising the minimum wage without raising havoc,” *The Washington Post*, (Sept. 5, 2014), available at https://www.washingtonpost.com/opinions/dana-milbank-no-calamity-yet-as-seatac-wash-adjusts-to-15-minimum-wage/2014/09/05/d12ba922-3503-11e4-9e92-0899b306bbea_story.html.

booming.²⁸ Dozens of new restaurants have opened in the city in 2015 since the increase went into effect. King County “has issued over 5,200 permits for food service establishments in Seattle so far this year,” which is fast approaching the total 5,458 permits issued in 2014 and the 5,415 permits issued in 2013.²⁹

Employers discussing how their businesses have managed the transition to the higher minimum wage have tended to cite several factors. Many have reported that part of the higher costs are offset by effects such as reduced employee turnover, decreased hiring and training costs, increased productivity, improved customer service, and increased consumer spending, that result when they and employers across the city begin paying higher wages. Others have noted that because employers citywide are all subject to the same higher wage, none are put at a competitive disadvantage.

III. STATES GENERALLY LEAVE THE QUESTION OF WHETHER LOCALITIES CAN ENACT LOCAL MINIMUM WAGE LAWS TO THE STATE LEGISLATURE, AND COURTS ADDRESSING THE QUESTION HAVE GENERALLY UPHELD LOCAL MINIMUM WAGE LAWS

In most states, legislatures (as opposed to courts) weigh in expressly if they seek to limit the permissibility of higher local minimum wages—something the Kentucky legislature has not done. Some states—almost exclusively in states controlled by legislators

²⁸ Jeanine Stewart, “Apocalypse Not: \$15 and the cuts that never came,” *Puget Sound Business Journal*, (Oct. 23, 2015), available at <http://www.bizjournals.com/seattle/print-edition/2015/10/23/apocalypse-not-15-and-the-cuts-that-never-came.html>.

²⁹ *Id.* In addition, a 2015 report evaluating existing research and employment statistics found “no evidence of employment loss in states that have increased the minimum wage and more evidence that suggests employment increases faster when there is an increase in the minimum wage.” Alan Stonecipher & Ben Wilcox, “Minimum Wage Policy and the Resulting Effect on Employment” *Integrity Florida*, (July 2015), available at <http://www.integrityflorida.org/wp-content/uploads/2015/07/Minimum-Wage-Policy-and-the-Resulting-Effect-on-Employment-final-.pdf>.

who oppose any increase in the minimum wage—have passed express prohibitions of local minimum wage laws (i.e. Louisiana,³⁰ Oklahoma,³¹ Georgia,³² Tennessee,³³ Mississippi,³⁴ Kansas,³⁵ and Florida³⁶). However, the majority of legislatures have chosen not to adopt such restrictions, allowing local governments to decide whether residents need a higher local minimum wage.

When courts in other states have considered local authority to adopt higher local minimum wages, they have generally shown little hesitation in concluding that a local minimum wage is a local matter pertaining to local affairs and is thus within the scope of home rule power. Courts in New Mexico, Maryland, and Wisconsin have held that the state labor law at issue in those cases set a wage floor, not a ceiling, allowing cities in those states to enact higher local minimum wage laws.

In *New Mexicans for Free Enterprise v. City of Santa Fe*, 126 P.3d 1149 (N. Mex. Ct. App. 2005), for example, local advocacy organizations and businesses challenged a Santa Fe ordinance requiring certain city-based businesses to pay a minimum wage higher than the state and federal minimum hourly wage. The court rejected the business groups' challenge, holding, in relevant part, that the minimum wage ordinance was within the city's home rule powers and not inconsistent with state law. *Id.* On the implied preemption question, the court explained that the state minimum wage law set “only a wage floor that does not bar higher local minimum wage rates” and concluded that the ordinance was

³⁰ See La. Stat. Ann. § 23:642 (prohibition enacted in 2012).

³¹ See Okla. Stat. Ann. tit. 40 § 160 (prohibition enacted in 2014).

³² See Ga. Code Ann. § 34-4-3.1(b)(1) (prohibition enacted in 2004).

³³ See Tenn. Code Ann. § 50-2-113 (prohibition enacted in 2013).

³⁴ See Miss. Code Ann. § 17-1-51 (prohibition enacted in 2013).

³⁵ See Kan. Stat. Ann. § 12-16,131(a)(3) (prohibition enacted in 2013).

³⁶ See Fla. Stat. Ann. § 218.077 (prohibition enacted in 2013).

“merely complementary to the [state law] and [was] not antagonistic towards the [state law’s] policy of ensuring that all workers are paid a minimum of \$5.15 per hour.”³⁷

The Maryland Court of Appeals similarly upheld local power to adopt a minimum wage ordinance.³⁸ Not only did the court find that the city ordinance did not conflict with state law,³⁹ it also found that the legislature did not preserve the exclusive right to legislate on the subject matter, which is required for preemption by occupation.⁴⁰ The court emphasized that the state has set the floor by regulating the minimum wage but not the ceiling:

[U]nless a general public law contains an express denial of the right to act by local authority, the State’s prohibition of certain activity in a field does not impliedly guarantee that all other activity shall be free from local regulation and in such a situation the same field may thus be opened to supplemental local regulation.⁴¹

In 2005, a Wisconsin circuit court upheld a Madison minimum wage ordinance. The Court noted that home rule states have wide latitude to govern themselves without state interference.⁴² Upholding the city’s authority to adopt the measure, the court ruled that the state minimum wage law did not preempt or limit local authority to adopt a higher minimum wage.⁴³ The court’s decision was superseded by a subsequently adopted statute that prohibited local minimum wage laws,⁴⁴ but the court’s conclusion that the local law

³⁷ *Id.* at 1166.

³⁸ *City Council of Baltimore v. Sitnick*, 255 A.2d 376 (Md. Ct. App. 1969).

³⁹ *Id.* at 385. (“[W]ith regard to the specific conflicts which the appellees contend exist between various provisions of the City law, when compared with the State law, we find that the purported conflicts properly lend themselves to the characterization of supplementation of the State law, rather than irreconcilable differences.”).

⁴⁰ *Id.*

⁴¹ *Id.* at 382.

⁴² *Main Street Coalition for Economic Growth v. City of Madison*, No. 04-CV-3853, slip op. (Dane County Cir. Ct., Branch 2, Apr. 21, 2005).

⁴³ *Id.*

⁴⁴ *See* Wis. Stat. Ann. § 104.001(1)–(2).

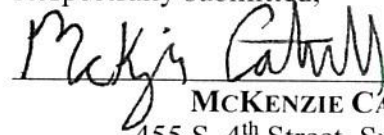
advances a legitimate local purpose within the scope of Madison's home rule authority has remained good law.

Ultimately, this Court should consider that all courts that have addressed whether a state minimum wage law preempts a local minimum wage law where the state and local laws at issue resembled the Ordinance in this case have upheld the local laws.

CONCLUSION

For the foregoing reasons, and those presented in the briefs of Appellee and Appellants, *amici curiae* respectfully requests that this Court uphold the Jefferson Circuit Court's ruling that Louisville Metro Government had the authority to enact and enforce the Ordinance in the interest of public policy.

Respectfully submitted,



MCKENZIE CANTRELL
455 S. 4th Street, Suite 1071
Louisville, KY 40202
Telephone: (502) 333-6019
Facsimile: (502) 416-0022
mckenzie@kyequaljustice.org

COUNSEL FOR *AMICI CURIAE*

COUNSEL FOR *AMICI CURIAE*
KENTUCKY EQUAL JUSTICE CENTER
NATIONAL EMPLOYMENT LAW PROJECT
KENTUCKY COALITION AGAINST DOMESTIC VIOLENCE
KENTUCKIANS FOR THE COMMONWEALTH
PLUMBERS AND PIPEFITTERS LOCAL 633
FREDDY PERALTA, OWNER, KYTRADE COMPUTERS, LLC
TERESA HENDRICKS, OWNER, LUCIA'S WORLD IMPORTS, LLC
BEN CARTER, OWNER, BEN CARTER LAW, PLLC
DAN BORSCH, OWNER OF BURGER BOY DINER
THOMAS CORNETT, PRESIDENT AND FOUNDER OF BLEED BLUE TATTOO